



APPENDIX E TO DIR CONTRACT NO. DIR-SDD-1360

SOFTWARE MAINTENANCE AGREEMENT

This is a Software Maintenance Agreement ("Agreement") dated as of _____, (the "Effective Date") by and between _____ ("Customer") having a place of business at _____, and CGI Technologies and Solutions Inc. ("CGI"), a Delaware corporation having its principal place of business at 11325 Random Hills Road, Fairfax, Virginia, 22030.

1. DEFINITIONS

Capitalized terms used in this Agreement will have the meanings given below or in the context in which the term is used, as the case may be.

- A. "Documentation" means the documentation provided by CGI for the Software pursuant to the License Agreement.
- B. "Enhancements" means changes or additions to the Software which CGI develops and makes available at no additional charge to all licensees of the Software who are under then-current maintenance agreements.
- C. "Software incident" means a material deviation of the Software from the specifications for the Software identified in the License Agreement.
- D. "License Agreement" means the license agreement specified in *Exhibit A* pursuant to which CGI licensed the Software to Customer.
- E. "Maintenance Period" means the initial term of this Agreement or any subsequent renewal period. The initial term and each renewal period is a separate Maintenance Period. The initial Maintenance Period is specified in *Exhibit A*. Each renewal Maintenance Period, if any, will be a period of twelve (12) months.
- F. "Software" means the software specified in *Exhibit A*.

2. MAINTENANCE

- A. CGI Standard Support and Maintenance Services provide the Customer with the required ongoing enhancements to the Software to address functional and technical changes. Specifically, the Standard Support and Maintenance Services provide these major components:
 - Internet access through our secure web site, eAccess (<https://support.cgi-ams.com/advantage/>), to a variety of 24x7 support materials.
 - Help Desk Support with direct phone, email, and web support on the baseline products through the CGI Customer Support Center. Standard hours of operation are 8 am EST to 9 pm EST Monday-Friday. CGI can be reached at 800-321-0267 via phone and <https://support.cgi-ams.com/advantage/> via our online support website.
 - Software incident corrections to the Software.
 - Software releases are provided periodically to address technical and functional compatibility with system software and ongoing regulatory changes and changes to business practices. Documentation updates are provided as part of each release. Additional Software incident corrections will be included in releases, as dictated by testing requirements and the magnitude of the required change.
 - Enhancements to the Software are provided in new releases of the AMS Advantage solution.
 - Membership to the AMS Advantage User Group. Membership provides the option to participate in various user group activities such as the annual CGI

Forum, regional User Group meetings and voting for the User Group Steering Committee that works closely with CGI on a variety of Customer issues and concerns. Membership also provides each site the option of proposing a candidate for election to the User Group Steering Committee.

CGI will support the following features of the AMS Advantage solution:

- The system components that the Customer is currently contracted for and is paying maintenance on;
- The third-party software component releases that are compatible with the currently supported version of the AMS Advantage solution;
- The documented features of the AMS Advantage Software, as listed on the delivered on-line documentation and help files;
- All standard baseline features of the system, including configuration tables (e.g. Required Elements) of the AMS Advantage Software, that DO NOT include infrastructure or other programming code changes. Any Customer-specific configuration tables will not be supported.
- Prioritizations of all issues and software incidents according to the following schedule:

Severity	Definition
1 - Critical	A problem with CGI supported Software causing critical impact to the Customer's business operation. No workaround is immediately available and work using the Software can not continue.
2 - Serious	A problem with CGI supported Software causing significant impact to the Customer's business operation. A workaround is available but is unacceptable on a long term basis.
3 - Moderate	A problem with CGI supported Software that impairs some functionality, but a practical workaround exists.
4 - Minor	A problem that does not affect any functionality of the Software.

- B. CGI may, at its option, investigate and correct suspected software incidents at CGI's offices to the extent possible. If CGI's personnel travel to Customer's place of business at Customer's request to perform maintenance services, Customer will reimburse CGI for the travel expenses of CGI's personnel in accordance with Section 4.G. of DIR Contract No. DIR-SDD-1360. If a suspected software incident is attributable to a cause other than the Software as delivered by CGI, then Customer will pay for CGI's work on a time-and-materials basis. If the Software module containing the software incident has been modified by non-CGI personnel, CGI will charge Customer on a time-and-materials basis at CGI's then-current hourly rates for analyzing and fixing the software incident in Customer's version, and for any installation assistance Customer requires.
- C. At the expiration of the initial Maintenance Period stated in this Agreement, Customer may buy maintenance services for the Software for subsequent Maintenance Periods in which CGI is offering maintenance services, at CGI's then current prices. Customer may obtain such maintenance services only if (i) Customer has paid the maintenance fee for all prior Maintenance Periods; and (ii) Customer incorporates into the Software all releases, corrections, and Enhancements to the Software that CGI has made available to Customer, no less than two minor software releases prior to current release.

- D. All Enhancements and corrections to the Software and Documentation provided by CGI pursuant to this Agreement will become a part of the Software and Documentation for the purposes of the License Agreement at the time they are provided to Customer and are hereby licensed to Customer as part of the Software and Documentation pursuant to all of the terms and conditions of the License Agreement.

3. PAYMENT TERMS

- A. Customer will pay, upon execution of this Agreement, the maintenance fees for the initial Maintenance Period set forth in *Exhibit A*. CGI will provide Customer with written notice of and an invoice for the maintenance fees for each subsequent Maintenance Period at least thirty (30) calendar days prior to the expiration of the then-current Maintenance Period. CGI will not be obligated to provide maintenance services in any Maintenance Period (including the initial Maintenance Period) unless the maintenance fees for the Maintenance Period have been paid in full.
- B. All fees and expenses are to be paid to CGI in United States Dollars, by wire transfer of funds to an account designated by CGI or by check sent to CGI at 15038 Collections Center Drive, Chicago, IL 60693. Invoicing and Payment shall be in accordance with Sections 7.B. and 7.C. of Appendix A of DIR Contract No. DIR-SDD-1360.
- C. As per Section 151.309, Texas Tax Code, Customers under this Agreement are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Agreement are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

4. WARRANTIES AND REMEDIES FOR BREACH OF WARRANTY

- A. CGI warrants that the maintenance services will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such maintenance services. If Customer believes there has been a breach of this warranty and so notifies CGI in writing stating in reasonable detail the nature of the claimed breach within thirty (30) calendar days after the maintenance services are delivered to Customer by CGI, then CGI will promptly investigate the matter. If it is determined that there has been a breach of this warranty, then CGI's sole obligation, and Customer's exclusive remedy, will be for CGI to correct or re-perform any affected maintenance services as necessary to cause them to comply with this warranty. There will be no additional charge to Customer for the investigation and correction efforts performed by CGI, except as provided in Section 2.B. If CGI is unable to correct a breach of this warranty after repeated efforts, Customer will be entitled to recover its actual damages subject to the limitations and exclusions set forth in Section 5.
- B. CGI warrants that the Software and Documentation do not, to CGI's knowledge, infringe any third party copyrights, patents or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America.
- (1) Infringement indemnification shall be in accordance with Section 9.A.2) of Appendix A of the DIR Contract No. DIR-SDD-1360.
 - (2) If such a proceeding is brought or appears to CGI to be likely to be brought, CGI may, at its sole option and expense, either obtain the right for Customer to continue using the allegedly infringing item(s) or replace or modify the item(s) to resolve such proceeding. If CGI finds that neither of these alternatives is available to it on commercially reasonable terms, CGI may require Customer to return the allegedly infringing item(s), in which case Customer will receive a refund of the amounts paid by it for the returned item(s), depreciated on a

straight-line basis over a five (5) year period commencing on the date the allegedly infringing item(s) were delivered to Customer by CGI.

This Section 4.B states CGI's entire obligation to Customer and Customer's sole remedy with respect to any claim of infringement.

- C. CGI is not responsible for any claimed breaches of the foregoing warranties caused by: (i) modifications made to the Software or Documentation by anyone other than CGI and its subcontractors working at CGI's direction; or (ii) the combination, operation or use of the Software or Documentation with any items that CGI did not supply to Customer; or (iii) Customer's failure to use any new or corrected versions of the Software or Documentation made available by CGI; or (iv) CGI's adherence to Customer's specifications or instructions.
- D. CGI does not warrant that the Software will be error-free or that its operation will be uninterrupted. Customer acknowledges that it alone is responsible for the results obtained from use of the Software, including without limitation the completeness, accuracy and content of such results. Customer acknowledges further that it alone is responsible for independent verification and testing of any such results prior to using them in its business.
- E. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

5. LIMITATION OF LIABILITY

- A. If Customer should become entitled to claim damages from CGI (including without limitation, for breach of contract, breach of warranty, negligence or other tort claim), CGI will be liable only for the amount of Customer's actual direct damages, not to exceed (in the aggregate for all claims) the amounts paid by Customer to CGI for the Maintenance Period with respect to which the claims arise. This limit also applies to CGI's licensors. It is the maximum liability for which CGI and its licensors are collectively responsible.
- B. In no event will CGI or any person or entity involved in the creation, manufacture or distribution of any Software, services or other materials provided under this Agreement be liable for: (1) any damages caused by the failure of Customer or its affiliates or suppliers to perform their responsibilities; (2) any claims or demands of third parties (other than those third party claims covered by Section 9.A. of Appendix A of DIR Contract No. DIR-SDD-1360); or (3) any lost profits, loss of business, loss of use, lost savings or other consequential, special, incidental, indirect, exemplary or punitive damages, even if CGI has been advised of the possibility of such damages.
- C. The foregoing limitations do not apply to the payment of settlements, costs, damages and legal fees referred to in Section 9.A. of Appendix A of DIR Contract No. DIR-SDD-1360. The limitations of liability set forth in this Section 5 will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this Agreement. The parties agree that the foregoing limitations will not be deemed to limit any liability to an extent that would not be permitted under applicable law.

6. TERMINATION

- A. Termination shall be in accordance with Section 10.B. of DIR Contract No. DIR-SDD-1360.

7. LAW AND DISPUTES

- A. This Agreement will be governed by the laws of the State of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- B. Both CGI and Customer agree to comply fully with all relevant export laws and regulations of the United States to ensure that no information or technical data provided pursuant to this Agreement is exported or re-exported directly or indirectly in violation of law.
- C. Dispute Resolution shall be in accordance with Section 10.A. of Appendix A of DIR Contract No. DIR-SDD-1360.
- D. No proceeding, regardless of form, arising out of or related to this Agreement may be brought by either party more than two (2) years after the accrual of the cause of action, except that (i) proceedings related to violation of a party's proprietary rights or any duty to protect Confidential Information may be brought at any time within the applicable statute of limitations, and (ii) proceedings for non-payment may be brought up to two (2) years after the date the last payment was due.

8. GENERAL

- A. Notices shall be in accordance with Section 11.A. of DIR Contract No. DIR-SDD-1360..

In the case of Customer:	with a copy of legal notices to:
_____	_____
_____	_____
Attn: _____	Attn: _____
Fax: _____	Fax: _____
Phone: _____	Phone: _____
E-Mail: _____	E-Mail: _____
In the case of CGI:	with a copy of legal notices to:
CGI Technologies and Solutions Inc. 11325 Random Hills Road Fairfax, Virginia 22030 Attn: _____ Fax: _____ Phone: _____	CGI Technologies and Solutions Inc. 11325 Random Hills Road, 8 th Floor Fairfax, Virginia 22030 Attn: Office of General Counsel Fax: 703.267.7288 Phone: 703.267.8000

- B. Force Majeure shall be in accordance with Section 10.C. of DIR Contract No. DIR-SDD-1360.
- C. Assignment shall be in accordance with Section 4.D. of DIR Contract No. DIR-SDD-1360.
- C. DIR Contract No. DIR-SDD-1360 and this Agreement constitute the entire agreement between the parties, and supersede all other prior or contemporaneous communications between the parties (whether written or oral) relating to the subject matter of this Agreement. This Agreement may be modified or amended solely in a writing signed by both parties. In the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-1360, the DIR Contract will control.



- D. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.
- E. No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under this Agreement.
- F. During the term of this Agreement and for twelve months after its expiration or termination, neither party will directly solicit for employment by itself (or any of its affiliates) any employee of the other party (or any of its affiliates) who was involved in the performance of the party's obligations under this Agreement, unless the hiring party obtains the written consent of the other party. General advertisements for employment, to which an employee freely responds, do not constitute a breach of this provision.
- G. The Exhibits referred to in and attached to this Agreement are made a part of it as if fully included in the text.

Each party has caused its authorized representative to execute this Agreement as of the Effective Date.

CGI Technologies and Solutions Inc.
(CGI)

(Customer)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



EXHIBIT A

CGI TECHNOLOGIES AND SOLUTIONS INC.
Software Maintenance Agreement

1. **Maintenance Period.** The initial Maintenance period is the period beginning _____ and ending on _____.
2. **Maintenance Fee.** The maintenance fee for the initial Maintenance shall be in accordance with the rates set forth in Appendix C of DIR Contract No. DIR-SDD-1360 and shall be: _____.

Customer may buy maintenance services for the Software for subsequent Maintenance Periods in which CGI is offering maintenance services, at CGI's then current prices

3. **Software.** The maintenance services under this Agreement are provided with respect to the following Software:

{Insert Licensed Software after list is finalized in License Agreement}

4. **License Agreement.** The Software was provided to Customer pursuant to the terms and conditions of that certain Proprietary Software License Agreement between CGI and Customer made effective as of *[Insert effective date of License Agreement]*. In the event CGI ceases to operate in the ordinary course of business, Customer will be granted a limited license to access and use the CGI Software source code solely for purposes of maintaining the Software, and consistent with the terms of the Proprietary Software License Agreement. Access and use of the CGI source code prior to this release event is prohibited.

Agreed to and initialed for identification by:

(Customer)

(CGI)